

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRANDON DANIEL,	§	
	§	
Petitioner,	§	
	§	CIVIL NO. A-17-CV-1069-LY
v.	§	
	§	* DEATH PENALTY CASE *
LORIE DAVIS, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

RESPONDENT'S ADVISORY

Respondent Lorie Davis (the Director) files this Advisory to explain why supplemental state court records are being concurrently filed with the Court.

In February 2016, Petitioner Brandon Daniel applied for a state writ of habeas corpus and submitted two volumes of exhibits. Volume 1 is contained in the state court record the Director previously filed with this Court. However, Volume 2 was not included because it was filed under seal in state court: "Under Seal Exhibits 23 to 30 to the Initial Application for a Writ of Habeas Corpus, Volume 2." (Exhibit A). The sealed exhibits were available to be transmitted to the Texas Court of Criminal Appeals for its consideration in relation to Daniel's writ application. On October 18, 2017, the Texas Court of Criminal Appeals denied habeas corpus relief. *Ex parte Daniel*, No. 83,459-01 (Tex. Crim. App. 2017).

Daniel is currently before this Court seeking a federal writ of habeas corpus. Daniel's counsel informed the undersigned that they are using all but one of the Under Seal Exhibits 23-30, in whole or in part, to support their amended federal habeas petition. ECF Nos. 7-1 to 7-6, ECF 20 (seven appendices of federal habeas exhibits). In order to determine whether evidence is newly presented in federal court and barred from review under *Cullen v. Pinholster*, 563 U.S. 170, 181-82 (2011), undersigned counsel filed in the state habeas court an Unopposed Motion to Unseal Records. On August 26, 2019, Judge Brenda P. Kennedy of the 403rd District Court for Travis County, Texas, signed an order granting the Director's motion, and ordered that a copy of Daniel's Exhibits 23-30 be forwarded to the undersigned. (Exhibit B). Those records were received and are concurrently being filed as supplemental state court records in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 24, 2019, I electronically filed this Advisory using the Court's CM/ECF system. The Notice of Electronic Filing that was generated constitutes service of this document on the following Filing Users:

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